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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,911	01/24/2001	Lap-Wai Chow	B-3962 618027-2	5023

7590 08/14/2002

Victor Repkin, Esq.  
c/o LADAS & PARRY  
5670 Wilshire Boulevard, Suite 2100  
Los Angeles, CA 90036-5679

EXAMINER

ZARNEKE, DAVID A

ART UNIT	PAPER NUMBER
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2827

DATE MAILED: 08/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/768,911	Applicant(s) CHOW ET AL.	
	Examiner David A. Zarneke	Art Unit 2827	

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 9-16 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 17 and 19-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/24/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s). <u>10</u> |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> | 6) <input type="checkbox"/> Other:  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of claims 1-8, 17, 19 and 21 in the interview summary attached herein is acknowledged. The traversal is on the ground(s) that 1) the product vs. product restriction is improper and 2) the species requirement is improper.

Regarding the product vs. product restriction, applicant argues that the materially different process presented by the examiner is not valid. In the response sent out 5/28/02, paper # 9, a response was presented that corrected a mistake in the restriction requirement. Specifically, the reason for restriction was intended to say that the metal layers could be selectively deposited, not the via.

As in the response mailed 5/28/02, paper # 9, the requirement is still deemed proper and is therefore made FINAL.

With respect to the species requirement, this has been removed based upon applicant's admission in the attached interview summary that the 2 species are the same because of the broad interpretations of the words "first", "second", "upper" and "lower". This admission can be used against the applicant, as per the MPEP.

The attached interview summary overcomes the non-responsive amendment mailed 5/28/02 therefore the claims that will be examined are 1-8, 17, and 19-21.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1-3, 5-7, 17, and 19-21 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Vajana, EP 1,193,758.

Vajana teaches anti-deciphering contacts comprising:

an insulating layer (111) placed upon a semiconductor substrate;

a first metal layer (110) and a second metal layer (the layer above insulating layer 111);

a via in said insulating layer that is connected to one metal layer and not connected to the other metal layer (Figure 16 & 6, [0055] +).

Regarding claims 2 and 6, Vajana teaches the above false via to be apart of an integrated circuit (Figure 16).

With respect to claims 3 and 7, Vajana teaches the insulating layer (111) to be made of TEOS (6, [0055]), which is a silicon oxide.

As to claims 5, 17 and 19, the admission of Applicant in their response to the species restriction in paper #6 is here cited as evidence. Applicant stated that the first

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and second metal layers and the first end and the second ends of the via are not patentably distinct because the terms "first" and "second" do not define the layers as being upper or lower layers. Meaning either the first or second metal layer and the first end or the second ends of the via could extend from either the top or the bottom of the insulating layer.

Regarding claims 20 and 21, Applicant argues that these two claims are generic in the same way that claims 5, 17 and 19 are generic. Namely that "upper" and "lower" are attached to the words "first" and "second". As noted above, "first" and "second" can be been either layer, therefore they could read upon the same invention.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vajana, EP 1,193,758 as applied to claims 1 and 5 above respectively.

Vajana, relied upon as taught above, fails to specifically teach the integrated circuit to comprise a complementary metal oxide-semiconductor, bi-polar silicon, or group III-group V integrated circuits.

With respect to claims 4 and 8, the type of IC made is an obvious matter of design choice since it has been held to be within the general skill of a worker in the art

to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. (*In re Leshin* 125 USPQ 416).

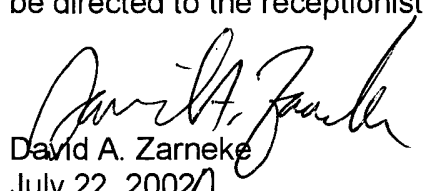
### **Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent Application Publication 2002/0063268 (Vajana et al.), JP 2001284357 (Kawai), and JP 2001118845 (Sugai) are all cited as teaching inventions similar to the present invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Zarneke whose telephone number is (703)-305-3926. The examiner can normally be reached on M-Th (7:30-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David L. Talbott can be reached on (703)-305-9883. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-308-7722 for regular communications and (703)-308-7721 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703)-308-0956.

  
David A. Zarneke  
July 22, 2002

  
**KAMAND CUNEO**  
**PRIMARY EXAMINER**